

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-1068-PST-E    TCEQ ID: RN101662013    CASE NO.: 36130**  
**RESPONDENT NAME: MATTIE NOVOSAD**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 203 West Mesquite Avenue, Rogers, Bell County</p> <p><b>TYPE OF OPERATION:</b> Real property</p> <p><b>SMALL BUSINESS:</b> N/A</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired September 21, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b> TCEQ Attorney: Ms. Peipey Tang, Litigation Division, MC 175, (512) 239-0654 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 1258, (512) 239-0577 TCEQ Regional Contact: Mr. Frank Burleson, Waco Regional Office, MC R-9, (254) 761-3001 Respondent: Ms. Mattie Novosad, 506 N. Thomas Street, Caldwell, Texas 77836 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p> <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review         </p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> March 25, 2008</p> <p><b>Date of NOE Relating to this Case:</b> April 23, 2008</p> <p><b>Background Facts:</b>            The EDPRP was filed on December 10, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The EDFARP was filed on April 14, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The Respondent filed an answer and the case was referred to SOAH. The Respondent failed to appear at the Preliminary Hearing held on July 2, 2009, and the matter was remanded to the Executive Director for default proceedings.         </p> <p><b>Current Compliance Status:</b>            Not yet in compliance. Respondent does not have a delivery certificate.         </p> <p><b>PST:</b>            Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an underground storage tank ("UST") system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].         </p>	<p><b>Total Assessed:</b> \$7,875</p> <p><b>Total Deferred:</b> \$0</p> <p> <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset         </p> <p><b>Total Due to General Revenue:</b> \$7,875</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor         </p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor         </p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 30 days, permanently remove the two USTs from service; and</li> <li>2. Within 45 days, submit written certification to demonstrate compliance with Ordering Provision No. 1.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

**TCEQ**

<b>DATES</b>	Assigned	19-Jun-2008	Screening	20-Jun-2008	EPA Due	
	PCW	12-Nov-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Mattie Novosad
Reg. Ent. Ref. No.	RN101662013
Facility/Site Region	9-Waco
Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	36130	No. of Violations	1	
Docket No.	2008-1068-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rajesh Acharya	
Multi-Media		EC's Team	Enforcement Team 6	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$7,500**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **5% Enhancement** **Subtotals 2, 3, & 7** **\$375**

Notes Enhancement for one NOV with same or similar violations.

**Culpability** **No** **0% Enhancement** **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** **0% Reduction** **Subtotal 5** **\$0**

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

**0% Enhancement\*** **Subtotal 6** **\$0**  
Total EB Amounts \$5,004  
Approx. Cost of Compliance \$10,000  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$7,875**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** **\$7,875**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$7,875**

**DEFERRAL** **0%** **Reduction** **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement

**PAYABLE PENALTY** **\$7,875**

Screening Date 20-Jun-2008

Docket No. 2008-1068-PST-E

PCW

Respondent Mattie Novosad

Policy Revision 2 (September 2002)

Case ID No. 36130

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN101662013

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

Screening Date 20-Jun-2008  
Respondent Mattie Novosad  
Case ID No. 36130  
Reg. Ent. Reference No. RN101662013  
Media [Statute] Petroleum Storage Tank  
Enf. Coordinator Rajesh Acharya

Docket No. 2008-1068-PST-E

PCW

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

Violation Number 1

Rule Cite(s)

30 Tex. Admin Code § 334.47(a)(2)

Violation Description

Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3

87 Number of violation days

mark only one  
with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

Three monthly events are recommended based on documentation of the violation during the March 25, 2008 record review to the June 20, 2008 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5,004

Violation Final Penalty Total \$7,875

This violation Final Assessed Penalty (adjusted for limits) \$7,875

## Economic Benefit Worksheet

**Respondent** Mattie Novosad

**Case ID No.** 36130

**Reg. Ent. Reference No.** RN101662013

**Media** Petroleum Storage Tank

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	22-Dec-1998	22-Dec-2008	10.0	\$5,004	n/a	\$5,004

Notes for DELAYED costs

Estimated expense to permanently remove the two USTs from service. Date Required is the date when the Respondent was required to upgrade the USTs. Final Date is the estimated compliance date.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$5,004

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603507799 Mattie Novosad Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN101662013 MATTIESS GROC & MKT Classification: AVERAGE Site Rating: 3.01  
BY DEFAULT

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 41621  
REGISTRATION

Location: 203 W MESQUITE AVE, ROGERS, TX, 76569

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: July 31, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 31, 2004 to July 31, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Rajesh Acharya Phone: (512) 239-0577

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

## Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A

B. Any criminal convictions of the state of Texas and the federal government.  
N/A

C. Chronic excessive emissions events.  
N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 05/08/2007 (556270)  
N/A 2 09/21/2007 (594703)  
3 04/23/2008 (640047)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 05/10/2007 (556270)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to perform the permanent removal of an underground storage tank (UST) system that has not met upgrade requirements.

F. Environmental audits.  
N/A

G. Type of environmental management systems (EMSs).  
N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MATTIE NOVOSAD,  
RN101662013**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2008-1068-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Mattie Novosad ("Ms. Novosad").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Ms. Novosad owns real property with two underground storage tanks ("USTs"), located at 203 West Mesquite Avenue, Rogers, Bell County, Texas (the "Site").
2. Ms. Novosad's USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Ms. Novosad's USTs contain a regulated petroleum substance as defined in the rules of the Commission
3. During a record review conducted on March 25, 2008, a Waco Regional Office investigator documented that Ms. Novosad failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
4. Ms. Novosad received notice of the violation on or about April 28, 2008.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mattie Novosad" (the "EDPRP") in the TCEQ Chief Clerk's office on December 10, 2008.
6. By letter dated on December 10, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Novosad with notice of the EDPRP. According to the return receipt "green card," Ms. Novosad received notice of the EDPRP on December 11, 2008, as evidenced by the signature on the card.
7. Ms. Novosad filed an answer requesting a hearing on March 9, 2009, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings ("SOAH") on April 29, 2009.
8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mattie Novosad" (the "EDFARP") in the TCEQ Chief Clerk's office on April 14, 2009.
9. By letter dated April 14, 2009 sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Novosad with notice of the EDFARP. According to the return receipt "green card," Ms. Novosad received notice of the EDFARP on April 17, 2009, as evidenced by the signature on the card.
10. On June 3, 2009, the TCEQ Chief Clerk mailed the notice of the July 2, 2009 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Ms. Novosad. According to the return receipt "green card," Ms. Novosad received notice of the July 2, 2009 preliminary hearing on June 6, 2009, as evidenced by the signature on the card.
11. On July 2, 2009, the Administrative Law Judge ("ALJ") convened the preliminary hearing, but Ms. Novosad failed to appear. The Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Ms. Novosad is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Ms. Novosad failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
3. As evidenced by Finding of Fact Nos. 5, 6, 8, and 9, the Executive Director has timely served Ms. Novosad with proper notice of the EDPRP and EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Ms. Novosad filed an answer to the EDPRP as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 30 TEX. ADMIN. CODE § 70.109.
5. As evidenced by Finding of Fact No. 10, Ms. Novosad was provided proper notice of a preliminary hearing pursuant to TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058 and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
6. As evidenced by Finding of Fact No. 11, Ms. Novosad failed to appear for the preliminary hearing. Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.056, and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Ms. Novosad and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Ms. Novosad for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount seven thousand eight hundred seventy-five dollars (\$7,875.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Ms. Novosad is assessed an administrative penalty in the amount of seven thousand eight hundred seventy-five dollars (\$7,875.00) for violations of TEX. WATER CODE chs. 7 and 26, and rules of the TCEQ. The payment of this administrative penalty and Ms. Novosad's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Mattie Novosad; Docket No. 2008-1068-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Ms. Novosad shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, Ms. Novosad shall permanently remove the two USTs from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
  - b. Within 45 days after the effective date of this Order, Ms. Novosad shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Frank Burleson, Waste Section Manager  
Waco Regional Office  
Texas Commission on Environmental Quality  
6801 Sanger Avenue, Suite 2500  
Waco, Texas 76710-7826

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Ms. Novosad. Ms. Novosad is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Ms. Novosad fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Ms. Novosad's failure to comply is not a violation of this Order. Ms. Novosad shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Ms. Novosad shall notify the Executive Director within seven days after Ms. Novosad becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and

substantiated showing of good cause. All requests for extensions by Ms. Novosad shall be made in writing to the Executive Director. Extensions are not effective until Ms. Novosad receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Ms. Novosad if the Executive Director determines that Ms. Novosad has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Mattie Novosad  
Docket No. 2008-1068-PST-E  
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## **SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

## AFFIDAVIT OF PEIPEY TANG

STATE OF TEXAS           §  
                                  §  
COUNTY OF TRAVIS       §

"My name is Peipey Tang. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mattie Novosad" (the "EDPRP") with the Office of the Chief Clerk on December 10, 2008.

I sent the EDPRP to Mattie Novosad ("Ms. Novosad") at her last known address on December 10, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Ms. Novosad received notice of the EDPRP on December 11, 2008, as evidenced by the signature on the card.

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Notice of a July 2, 2009 preliminary hearing was mailed by the TCEQ Chief Clerk on June 3, 2009. The Notice was sent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Ms. Novosad received the Notice of the Preliminary Hearing on June 6, 2009.

Ms. Novosad failed to appear at the preliminary hearing on July 2, 2009. At that hearing, I requested and received a finding that Ms. Novosad was served with proper notice of the hearing. I also requested and received a remand from the Administrative Law Judge pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), which gives an ALJ the authority to remand the case back



to the agency "to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056 and the referring agency's rules." Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.056, and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Ms. Novosad and assess the penalty recommended by the Executive Director.

Peipey Tang  
Peipey Tang  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Peipey Tang, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 21<sup>st</sup> day of August, A.D., 2009.

Notary Stamp

Sarah J. Huddleston  
Notary Signature

